

MOTION FILED

AUG 31 1979

IN THE
Supreme Court of the United States
OCTOBER TERM, 1979

79-347

CITY OF LOS ANGELES CALIFORNIA,
DADE COUNTY, FLORIDA, and
JACKSONVILLE PORT AUTHORITY, FLORIDA,
Petitioners,

v.

NEIL E. GOLDSCHMIDT, Secretary
of Transportation, *et al.*,
Respondents.

**MOTION FOR LEAVE TO FILE, AND
BRIEF AMICUS CURIAE OF AIRPORT OPERATORS
COUNCIL INTERNATIONAL IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

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(i)

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(ii)

CITATIONS

Statute:

The Airport and Airway Development Act of 1970,
as amended, 49 U.S.C. § 1701 *et seq.*
(1970 and Supp. V 1975) *passim*
49 U.S.C. § 1714(b) 3
49 U.S.C. § 1715(a)(3) 5

Regulation:

44 Fed. Reg. 18129 (March 26, 1979) 6

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MOTION

The Airport Operators Council International respectfully moves the Court for leave to file the within brief as *amicus curiae* in support of certiorari. Petitioners have consented to the filing of this *amicus* brief. Since this Motion is filed and served simultaneously with the petition, *amici* have not consulted Respondents respecting consent.

STATEMENT OF INTEREST OF THE AMICUS

The Airport Operators Council International, Inc. (AOCI) is the non-profit association of the governmental bodies which own or operate the principal airports in the fifty states, Puerto Rico and the Virgin Islands, and in many countries abroad. AOCI's United States member airports enplane over 90% of the domestic and virtually all of the U.S. international scheduled airline passenger and cargo traffic. AOCI members also operate many reliever and other general aviation airports which supplement the larger airports in their communities and regions.

AOCI submits this brief pursuant to Rule 42 of the Rules of this Court because it believes that this case presents an issue important to the administration of the Airport and Airway Development Act and all other similar grant programs: whether Federal Courts should uncritically permit agencies faced with appropriations limitations to give less-than-maximum-possible fidelity to statutory grant formulas. AOCI, joined by other non-profit organizations representing the interest of local governments, was the original proponent of the enplanement formula involved in this case.

ARGUMENT

Three central concerns which AOCI had in the formulation of the 1970 Airport Act were that it should create a trust fund consisting of receipts from user taxes sufficient to provide a significant level of development funding, that there should be an allocation measure designed to ensure that a significant percentage of such receipts would be returned proportionately to the sponsors which generated them by enplaning passengers, and that each sponsor's long-term project planning should be encouraged and

facilitated by some provision setting aside those funds exclusively for its use for a time certain.¹ The program enacted by Congress met each of these concerns, and authorized the commitment of approximately \$1.5 billion in development funds through the end of Fiscal 1975.

Each year, however, appropriations acts limited the overall amount which FAA could grant to an amount considerably less than the sum of the Act's current-year authorizations and carryovers of sponsors' entitlements from previous years. FAA's response to this, which precipitated the instant litigation, was to institute a so-called "priority system." Under that system, FAA made grants only to sponsors whose projects FAA thought important. The enplanement formula — so fundamental to the entire scheme of the Act — was relegated to dead letter status, subsumed by exercise of FAA's discretion.

I

THE DISTRICT COURT'S REMEDY PRESERVED CONGRESS' DIVISION OF AVAILABLE FUNDS EVENLY BY THIRDS

Going into Fiscal 1975, the last year of the first phase of the Act, FAA had \$310 million with which to satisfy \$503.7 million in enplanement sponsors' and States' entitlements and to make discretionary grants. FAA could have, and properly should have, devised a means by which to ensure that the appropriations-caused shortfall would burden each of the funding categories equally. It could, as the District Court's remedy decision contemplated, have set a funding goal for that year in each category which

¹Congress determined that sponsors should have a total of three years in which to call down funds apportioned to them (in a formal notice at the beginning of each fiscal year) under the enplanement formula. 49 U.S.C. § 1715(a) (3).

would have been directed to accomplishing such an equalization. The Court of Appeals' suggestion that this could only have been done at the end of the year is simply erroneous.

Instead, FAA persisted with its priority system and in so doing indeed exacerbated the disequilibrium between the three accounts. The District Court's remand record, drawn largely from FAA's own statistics, amply supports the finding that some \$18 million too little was disbursed on the basis of the enplanement formula in Fiscal 1975.

II

IN LIGHT OF THE FACTS SHOWING HOW AIRPORTS ACTUALLY CLAIMED THEIR ENTITLEMENTS DURING 1975, THE DISTRICT COURT'S REMEDY WOULD HAVE BEEN FAIR AND WORKABLE FOR AIRPORTS OTHER THAN PETITIONERS

The District Court was also correct in its finding that, had FAA made such a proper accommodation between the statute and the appropriations act in 1975, the three litigant sponsors could nevertheless have received the entire balance of their enplanement entitlements without adverse consequence to other airport sponsors. Many sponsors for various reasons² did not in fact make application for their accumulated entitlements in 1975 and would not have done so even if the priority system had been replaced by a system of administration during Fiscal 1975

²A common reason was sponsors' inability to obtain the necessary local matching funds. The City of Chicago, for example, waived entitlement to some \$16,000,000 (more than the total claimed by the three Petitioners here) in enplanement funds for this reason.

which, consistently with the statute, had guaranteed the obligation of some funds for an eligible project.³

The Court of Appeals, in remanding, said it lacked full information about the grant claims actually made by airports during 1975.

The District Court, on remand, correctly found that a remedial allocation of \$14.9 million to these 3 Petitioners would harm no other airports. The history of the airport aid program has been one of many entitled airports forswearing their enplanement entitlements.

The record in the District Court (affidavit of Henry Rich, May 7, 1975, ¶ 8) related that \$67.9 million of enplanement entitlements of other airports was unclaimed at the time these Petitioners preserved their claims by Court Order.

By June 30, 1975, \$67.2 million of this fallow entitlement remained. See App. A hereto.

³Under the federal program at issue here, no grants could be made after June 30, 1975. However, without relaxing that terminal provision, Congress has extended the airport grant program, beginning July 1, 1976 and ending September 30, 1980.

In its administration of the current Act, FAA has promulgated a rule, 44 Fed. Reg. 18129 (March 26, 1979), requiring that sponsors which desire the obligation of their enplanement apportionments (current year or carryover) in a given fiscal year must file their applications three months before the end of that year. The object — one which we think reasonable — is that FAA may know whether it can grant amount of funds for projects proposed by other sponsors, and thereby obligate the entirety of monies authorized and appropriated for that year.

III

THE PREMISE ON WHICH THE COURT OF APPEALS REVERSED THE REMEDY WAS FALSE

The Court of Appeals apparently labored under a misconception (Pet., p. 4a), attributable to its departure from the District Court's findings, that the funds apportioned to such sponsors were to be held for them beyond the end of Fiscal 1975. This was not so, and was never understood by anyone in the aviation community to be so. The Act's provision for enplanement carryovers was overridden by the prohibition on the obligation of any funds after June 30, 1975.⁴

AOCI of course made every possible effort to ensure that its member sponsors were apprised of their rights to seek those funds which were available within the Fiscal 1975 appropriations limits. Our many newsletters kept members informed of the progress of the lawsuits brought by Petitioners, and after Los Angeles obtained preliminary relief we circulated a special memorandum (see App. B hereto) advising all those with outstanding enplanement apportionments that their fact situations might be similar to Petitioners' and urging them to consult with their attorneys concerning any appropriate action they might take. Had other sponsors come forward, their entitlements might have been adjudicated. Had all other similarly situated sponsors come forward (with applications showing eligible projects and ability to provide matching money) it might or might not then have been necessary to make proportionate reductions in these grants in order that they all be treated equitably. No other sponsor did so come forward.

⁴49 U.S.C. § 1714(b).

The District Court's award of full relief to Petitioners not only harms no other sponsor, but also vindicates the aviation community's common interest in FAA's maximum adherence to the main pillar of the statutory scheme — the enplanement formula — by restoring the Act's three funding accounts to a proper balance. The Court of Appeals' second decision, which appears to predicate the necessity of reductions in Petitioners' grants solely upon the Court's earlier and factually unfounded impression, should be reversed.

CONCLUSION

In order to prevent similar maladministration by FAA in this program (and by other grant programs) to pass without judicial review properly premised on a correctly compiled factual record, this Court should grant the prayed for writ of certiorari.

Respectfully submitted,

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APPENDIX A**Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)**

State	Sponsor	Unobligated Enplanement Funds
ALABAMA	City of Anniston	9,828.00
	City of Tuscaloosa	7,605.90
	Colbert and Lauderdale Counties	669.00
	Dothan-Houston County Air- port Authority, Inc.	24,056.00
	Huntsville-Madison County Airport Authority	160,778.76
ARIZONA	City of Flagstaff	4,861.00
	City of Prescott	2,702.00
	Yuma County	31,894.00
	Cochise County	1,405.00
	U.S. Bureau of Reclamation	1,971.00
ARKANSAS	Boone County	7,868.87
	City of El Dorado	11,254.00
	City of Fort Smith	31,978.00
	City of Hot Springs	31,362.25
	City of Jonesboro	2,107.00
	Little Rock Municipal Airport Commission	89,483.74
	Texarkana Airport Authority	263.50
CALIFORNIA	City and County of San Francisco	8,962,094.00
	City of Fresno	58,702.10
	City of Los Angeles	505.00
	City of Oakland	412,645.00
	County of Sacramento	17,780.02
	County of Ventura	18,402.00
	Monterey Peninsula Airport District	92,846.11
	Orange County	459,413.00
	Riverside County	546.00
	San Diego Unified Port District	960,468.24
	San Luis Obispo County	4,778.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	Santa Maria Public Airport District	168.00
	Yuba County	2.00
COLORADO	City and County of Alamosa	11,942.00
	City of Grand Junction and County of Mesa	43,765.00
	City of Lamar	633.00
	City of Pueblo	21,600.05
	County of Gunnison	9,560.00
	Durango City La Plata County	8,794.00
	Montrose County	7,954.00
	Pitkin County	32,537.00
FLORIDA	Board of County Commis- sioners, Broward	12,165.45
	City of Gainesville	32,679.00
	Jacksonville Port Authority	300,487.12
	City of Ocala	5,972.00
	City of Tallahassee	12,590.00
	Hillsborough County Avia- tion Authority	161,845.00
	Board of County Commis- sioners, Monroe County	15,853.00
	Palm Beach County Board of County Commissioners	287,226.00
	Titusville-Cocoa Airport Authority	1,002.00
	County of Okloosa, Board of County Commissioners	39,398.00
GEORGIA	City of Albany and Dougherty County	24,759.00
	City of Atlanta	155,476.40
	City of Valdosta	12,750.00
	City of Waycross and Ware County	1,442.00
	Clarke County	3,099.00
	Floyd County	327.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	Glynn County	15,186.00
	City of Columbus and Colum- bus Airports Commission	266.59
HAWAII	State of Hawaii Department of Transportation	5,026.37
IDAHO	City of Burley	54.00
	City of Hailey	9,512.00
	City of Lewiston and County of Nez Perce	19,005.00
	City of Twin Falls and Coun- ty of Twin Falls	16,294.00
ILLINOIS	Board of Trustees of the University of Illinois	34,241.00
	City of Chicago	16,812,160.00
	City of Quincy	7,436.00
	Coles County Airport Authority	7,397.00
	Greater Peoria Airport Authority	56,006.07
	Mt. Vernon Airport Authority	1,850.00
	Whiteside County Board of Supervisors	5,600.00
	Vermilion County Airport Authority	11,093.00
INDIANA	City of Kokomo Board of Aviation Commissioners	3,203.00
	Evansville-Vanderburgh Air- port Authority	74,283.37
	Monroe County Board of Aviation Commissioners	4,324.00
	Terre Haute Board of Avia- tion Commissioners	6,464.00
IOWA	City of Clinton	1,112.00
	City of Iowa City	125.00
	City of Sioux City	35,437.00
	City of Waterloo	39,564.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
KANSAS	City of Great Bend	4,706.00
	City of Hutchinson	5,889.00
	City of Liberal	5,463.00
	City of Parsons	1,699.00
	Metropolitan Topeka Airport Authority	18,036.62
KENTUCKY	City of Bowling Green and County of Warren	1,450.00
	Kenton County Airport Board	304,487.31
	Louisville and Jefferson County Air Board	81,834.48
LOUISIANA	Airport District #1 of Calcasieu Parish	1,624.00
	City of Monroe	18,012.52
	New Orleans Aviation Board and the City of New Orleans	808,436.49
	City of Baton Rouge and Parish of East Baton Rouge	65,265.00
	City of Leesville	18,715.00
MAINE	City of Bangor	53,572.00
	Knox County Commissioners	5,861.00
	Hancock County	6,357.00
MARYLAND	Salisbury-Wicomico County Airport Commission	12,714.00
MASSACHU- SETTS	Massachusetts Port Authority	2,877,401.00
MICHIGAN	Cities of Benton Harbor and St. Joseph	12,076.00
	Cities of Saginaw and Midland and County of Bay	75,628.00
	City of Battle Creek	57,149.00
	City of Detroit	64,905.00
	County of Delta	7,685.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	City of Flint	45,602.00
	County of Dickinson	5,687.00
	County of Emmet	12,111.00
	County of Gogebic	4,049.00
	County of Houghton	23,503.00
	County of Kent	128,300.00
	City and County of Manistee	1,728.00
	County of Menominee	3,591.00
	County of Muskegon	30,365.00
	Capital Regional Airport Authority	143,142.00
MINNESOTA	City of Brainerd and County of Crow Wing	4,117.00
	City of Duluth	143,932.00
	City of Fairmont	1,498.00
	City of Thief River Falls	4,426.00
	City of Winona	2,908.00
	Minneapolis-St. Paul Metropolitan Airports Commission	2,207,873.87
MISSISSIPPI	Board of Supervisors Adams County	1,418.00
	City of Greenville	11,847.00
	City of Greenwood and Board of Supervisors Leflore County	2,349.00
	City of Gulfport	73,970.97
	City of Laurel	320.89
	City of Meridian	33,798.00
	City of Tupelo	5,407.00
	City of Vicksburg	181.00
	University of Mississippi	857.00
	Jackson County	729.00
MISSOURI	City of Columbia	9,309.00
	City of Joplin	46,102.00
	City of Kansas City	2,697,451.64

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	City of St. Joseph	511.00
	City of St. Louis	3,372,928.00
	City of Tribune	32,109.00
	Missouri State Park Board	2,849.00
MONTANA	City of Billings	96,382.00
	City of Glasgow and Valley County	958.00
	City of Great Falls	63,228.41
	City of Lewiston-Fergus County	419.00
	City of Wolf Point and County of Roosevelt	402.00
	Flathead County	3,469.08
	Helena and Lewis and Clark County	12,649.00
NEBRASKA	City of Chadron	1,587.00
	City of Sidney	645.00
	Norfolk Airport Authority	2,014.00
	North Platte Airport Authority	6,516.87
NEVADA	City of Elko	12,169.00
	Clark County	793,723.00
	Douglas County	5.00
NEW HAMPSHIRE	City of Lebanon and Lebanon Regional Airport Authority	16,697.15
	City of Berlin	247.00
	City of Laconia and Laconia Airport Authority	1,733.00
	Town of Whitefield	197.00
NEW JERSEY	City of Atlantic City	45,369.00
NEW MEXICO	City of Albuquerque	339,670.00
	County and City of Santa Fe	306.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	Grant County	5,799.00
	City of Farmington	12,476.00
NEW YORK	City of Olean	64.00
	City of Syracuse	181,667.00
	County of Monroe	2,476.40
	Dutchess County	24,256.00
	Port Authority of New York and New Jersey	9,033,286.90
	Town of Harrietstown	1,809.00
	Town of Islip	130,349.00
	Town of Messena	4,587.00
NORTH CAROLINA	Cities of Raleigh and Durham, Counties of Durham and Wake, and Raleigh-Durham Airport Authority	272,072.00
	City of Asheville	66,399.00
	City of Elizabeth City	1,099.00
	City of Fayetteville	157,456.00
	Forsyth County	61,969.00
	Moore County Board of Commissioners	788.00
	Onslow County	17,646.00
	City of Goldsboro	10,007.00
NORTH DAKOTA	City of Fargo, North Dakota Municipal Airport Authority	736.25
	City of Grand Forks	31,278.00
	City of Minot	23,228.00
OHIO	City of Cleveland	630,777.00
	City of Columbus	818,167.00
	City of Dayton	57,102.00
	City of Zanesville	17.00
	Scioto County	88.00
	Allen County	743.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
OKLAHOMA	City of Bartlesville	1,691.00
	City of Duncan	1,149.00
	City of Muskogee	1,688.00
	City of Oklahoma City	6,274.14
OREGON	City of Baker	312.00
	City of Corvallis	1,190.00
	City of Klamath Falls	22,571.00
	Jackson County	37,084.00
	City of North Bend	20,942.00
	City of Ontario	163.00
	City of Salem	4,275.00
	Port of Astoria	1,285.00
PENNSYLVANIA	Bradford Regional Airport Authority	11,774.00
	County Commissioners, Luzerne and Lackawanna Counties	163,876.00
	Dubois Municipal Airport Authority	5,174.00
	Johnstown-Cambria County Airport Authority	29,276.70
	Lancaster Airport Authority	30,538.00
	Lehigh-Northampton Airport Authority	91,203.00
	Reading Municipal Airport Authority	32,959.00
	Williamsport Municipal Airport Authority	34,181.00
	City of Hazleton	5,298.00
PUERTO RICO	Puerto Rico Ports Authority	2,665,912.00
RHODE ISLAND	State of Rhode Island	208,697.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
SOUTH CAROLINA	City of Charleston and Charleston County Aviation Authority	456,836.00
	City of Florence and Florence County	9,500.00
	County of Anderson	4,624.00
	Greenville Spartanburg Airport Commission	20,938.00
	Greenwood County	1,439.00
SOUTH DAKOTA	City of Aberdeen	10,445.58
	City of Brookings	838.00
	City of Rapid City	52,650.00
	City of Sioux Falls	159,833.03
	City of Yankton	1,811.00
TENNESSEE	City of Chattanooga	104,030.00
	City of Memphis and Memphis-Shelby County Airport Authority	65,627.00
	City of Shelbyville	2,048.00
	Metropolitan Government of Nashville and Davidson County Tennessee and Metropolitan Nashville Airport Authority	527,011.87
TEXAS	Angelina County	2,134.00
	City of Amarillo	244,778.00
	City of Austin	382,637.16
	City of Brownsville	32,225.87
	City of Brownwood	3,223.00
	City of Corpus Christi	224,659.00
	City of Dallas	2,825,965.00
	City of El Paso	711,952.00
	City of Galveston	5,547.00
	City of Laredo	24,282.00

10a

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	City of San Angelo	6,976.00
	City of Temple	6,471.00
	City of Victoria	6,327.00
	Gregg County	4,752.00
	Hutchinson County	1.00
	Texas A&M University	12,999.00
	City of Dallas, City of Ft. Worth, and the Dallas Ft. Worth Regional Airport Board	68.00
	City of Wichita Falls	29,827.00
UTAH	Vernal City and Uintah County	5,794.00
VIRGINIA	City of Danville	5,552.00
	City of Lynchburg	26,227.00
	Norfolk Port and Industrial Authority	767,763.00
	Capital Region Airport Commission	314,128.00
	City of Roanoke	163,347.00
	New River Valley Airport Commission	762.00
WASHING- TON	Port of Chelan County and Port of Douglas County	2,647.00
	Port of Grays Harbor	1,772.00
	Port of Pasco	30,341.00
	City of Walla Walla and County of Walla Walla	17,420.00
WEST VIRGINIA	City of Martinsburg	675.00
	Elkins-Randolph County Air- port Authority	3,567.00
	Ohio County Board of Com- missioners	31.00
	Tri-State Airport Authority	28,456.00
	Greenbrier Valley Airport Authority and County Court of Greenbrier County	8,846.60

11a

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
WISCONSIN	City and County of Manitowoc	7,292.00
	City of Eau Claire	10,490.00
	County of Dane	107,855.00
	County of Milwaukee	25,114.90
	Town of Land O'Lakes	102.00
WYOMING	City of Cheyenne	12,402.00
	City of Cody	2,889.00
	City of Laramie and County of Albany	4,108.00
	City of Rock Springs and County of Sweetwater	8,589.00
	City of Worland	2,053.00
	Sheridan County	5,644.00
	Town of Jackson and County of Teton	32,751.00
GRAND TOTAL		67,203,186.21

APPENDIX B**AIRPORT OPERATORS COUNCIL INTERNATIONAL**

May 16, 1975

TO: Selected AOCI Official Representatives

SUBJECT: PRESERVATION OF ADAP
APPORTIONMENT MONIES FOR YOUR
AIRPORT

Gentlemen:

As earlier reported (Airport HIGHLIGHTS, May 12), the City of Los Angeles petitioned the Federal District Court for an injunction to prohibit the U.S. Department of Transportation from obligating to any other airport sponsor the ADAP grant authority apportioned to Los Angeles under the Airport and Airway Development Act provision which guarantees one-third of funds to sponsors based on their passenger enplanement shares. The City claimed that the FAA and DOT were illegally using discretion and judgment in deciding where to obligate these funds. The City was successful in obtaining a Temporary Restraining Order and on May 15 obtained a preliminary injunction which allows the federal government to obligate all but 9.5 million dollars — that amount to which Los Angeles claims it is entitled. A copy of the opinion and order is enclosed for your information.


AOCI has determined that there are other eligible airport sponsors whose enplanement apportionment has not yet been obligated by FAA, and whose fact situation may be similar to that of Los Angeles. FAA has estimated that the amount of unobligated enplanement funds for your organization is _____.

Sponsors are advised to consult with legal counsel to determine what actions, if any, may be appropriate for your organization to take.

As usual, the staff of AOCI stands ready to assist in any way possible. For further information, contact Milford Coor.

Thank you.

Sincerely,



J. Donald Reilly
Executive Vice President

Enclosure

International Headquarters: 1700 K Street, Northwest, Washington, D.C. 20006
Phone: (202) 296-3270 Cable: AOCIHO